

## PART 609—CONTRACTOR QUALIFICATIONS

### Subpart 609.2—Qualifications Requirements

Sec.

609.202 Policy.

609.206 Acquisitions subject to qualification requirements.

609.206-1 General.

### Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.

609.403-70 DOSAR definitions.

609.404 List of parties excluded from Federal procurement and nonprocurement programs.

609.404-70 Specially Designated Nationals List.

609.405 Effect of listing.

609.405-1 Continuation of current contracts.

609.405-2 Restrictions on subcontracting.

609.405-70 Termination action decision.

609.406 Debarment.

609.406-1 General.

609.406-3 Procedures.

609.407 Suspension.

609.407-1 General.

609.407-3 Procedures.

### Subpart 609.5—Organizational and Consultant Conflicts of Interests

609.503 Waiver.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

### Subpart 609.2—Qualifications Requirements

#### 609.202 Policy.

The authority prescribed in FAR 9.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

#### 609.206 Acquisitions subject to qualification requirements.

##### 609.206-1 General.

(b) The authority prescribed in FAR 9.206-1(b) is delegated, without power of redelegation, to the head of the contracting activity.

[64 FR 43622, Aug. 11, 1999]

## Subpart 609.4—Debarment, Suspension, and Ineligibility

### 609.403 Definitions.

*Debarring official* means the Procurement Executive.

*Suspending official* means the Procurement Executive.

### 609.403-70 DOSAR definitions.

*Fact-finding official* means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

*Notice* means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406-3 and FAR 9.407-3.

### 609.404 List of parties excluded from Federal procurement and non-procurement programs.

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66756, Dec. 28, 1994]

### 609.404-70 Specially Designated Nationals List.

Contracting officers shall not award to any of the entities listed on the Specially Designated Nationals (SDN) List, available on the Department of Treasury's Office of Foreign Assets Control Web site at <http://www.treas.gov/ofac/>. Contracting officers shall consult this list prior to award for any dollar amount. This list

## Department of State

## 609.406-3

may also be accessed through the EPLS Web site at <http://epls.arnet.gov>.

[69 FR 19331, Apr. 13, 2004]

### 609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d)(3) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(d)(3).

[59 FR 66756, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43622, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004]

### 609.405-1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405-70.

### 609.405-2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-2.

### 609.405-70 Termination action decision.

(a) Prior to making a decision to terminate, based on the consideration listed below, the contracting officer shall have the proposed action reviewed and approved by:

(1) The Office of the Legal Adviser;  
(2) An individual one level above the contracting officer; and

(3) For overseas posts, A/OPE.

(b) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(c) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when

such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

(1) Seriousness of the cause for debarment or suspension;

(2) Extent of contract performance;

(3) Potential costs to the Government;

(4) Urgency of the requirement and the impact of the delay; and/or

(5) Availability of other safeguards to protect the Government's interests.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

### 609.406 Debarment.

#### 609.406-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406-1(c).

#### 609.406-3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office. The Office of the Inspector General shall investigate the matter, as appropriate, and provide a copy of its investigation report to the Procurement Executive for consideration of debarment action, if and when appropriate. The contracting officer shall provide to the Procurement Executive and the Office of the Inspector General a copy of his or her intended actions in response to the Office of the Inspector General report.

(2) Referrals for consideration of debarment shall include—

(i) The cause for debarment (see FAR 9.406-2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-

finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406-3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarring official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406-3(b)(2), the hearing

is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406-3(b). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official within 30 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406-3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational element affected by the determination.

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406-3(d) and FAR 9.406-3(e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 64 FR 43622, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004]

## Department of State

### 609.407 Suspension.

#### 609.407-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407-1(d).

#### 609.407-3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406-3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407-2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407-3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407-3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406-3(a), except that the suspending official shall process the notice in accordance with FAR 9.407-3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407-3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

### Subpart 609.5—Organizational and Consultant Conflicts of Interests

#### 609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

## PART 611—DESCRIBING AGENCY NEEDS

Sec.  
611.002 Policy.

## 611.002-70

611.002-70 Metric system implementation.

### Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

### Subpart 611.5—Liquidated Damages

611.502 Policy.

### Subpart 611.6—Priorities and Allocations

611.600 Scope of subpart.

611.602 General.

611.603 Procedures.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 64 FR 43622, Aug. 11, 1999, unless otherwise noted.

### 611.002 Policy.

#### 611.002-70 Metric system implementation.

(a) *Policy.* The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), requires Federal agencies to establish implementing guidelines pursuant to metric policy to adopt the metric system as the preferred system of weights and measurements for United States trade and commerce. This section establishes the Department of State's metric conversion guidelines.

(b) *Applicability.* This section applies to all DOS acquisitions, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(c) *Definitions.*

*Dual system* means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

*Hard metric* means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

*Hybrid system* means the use of both traditional and hard metric values in specifications, standards, supplies and services.

*Measurement sensitive* means any item having an application or meaning depending substantially on some measured quantity. For example, measurement sensitive items include product